

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Melissa Joell Martin,

Debtor.

Case No.: 04-31050

Chapter 13 Case

**NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF
AMENDED CHAPTER 13 PLAN**

TO: All parties in interest pursuant to Local Rule 9013-3.

1. Michael J. Farrell, Chapter 13 Trustee (the "Trustee"), by and through his undersigned attorney, moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 10:00 a.m. on October 28, 2004 in Courtroom 228B, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101.

3. Any response to this motion must be filed and delivered not later than 10:00 a.m. on October 27, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than October 25, 2004, which is three business days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing a Chapter 7 case was filed on February 24, 2004. The Chapter 7 case was converted to a Chapter 13 on July 2, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3015-2, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may pertain. Movant requests relief with respect to denial of confirmation of the Debtor's Amended Chapter 13 plan filed August 30, 2004 (the "Plan").

6. The debtor is a Registered Nurse at Immanuel-St. Joseph's Hospital and her Schedule I shows her gross monthly income from her employment at \$7,000.61. The debtor has \$2,672.82 deducted in payroll taxes, social security, insurance, union dues, and pharmacy expenses. The debtor receives a total net monthly income of \$4,327.79. The debtor's Schedule J shows household expenses of \$4,167.80 per month, including \$572.95 in utilities, \$100.00 in clothing and \$225 for pet expenses.

7. The debtor's Plan proposes payments of \$159.99 per month to the Trustee for a period of 36 months, \$1,757.15 of which has already been paid to the Trustee, for a total of \$5,759.64 (the "Plan Funds"). After payment of the debtor's attorney fees, the balance of the Plan Funds, net of the Trustee's statutory fee, are allocated for the Debtor's non-priority unsecured creditors, whose claims are estimated at \$19,514.46, for a dividend of approximately twenty-six percent (26%).

8. The debtor lists the following monthly expenditures: \$405.00 for electricity and heating fuel; \$20.00 for water and sewer; \$70.00 for telephone; \$53.00 for cable television; \$24.95 for internet; \$100.00 for clothing; and \$225.00 for pet food for 3 goats, 3 dogs and 7 wallabies. These expenses are excessive. The Trustee understands from the debtor that the 3 goats have been or will be sold. The Trustee objects to confirmation of the Plan on the ground that the debtor is not proposing to pay all of her "disposable income" for the next 36 months into the plan, as required by 11 U.S.C. § 1325(b)(2), in that her utilities, clothing and pet food expenses are excessive and therefore, not "reasonably necessary" for her support.

9. If necessary, the debtor or the Trustee may be called to testify in connection with this motion.

WHEREFORE, the Trustee moves the court for an order denying confirmation of the debtor's proposed Amended Chapter 13 plan filed August 30, 2004, and such other relief as may be just and equitable.

Ulvin and Sullivan Attorneys, P.A.

Dated: October 12, 2004

By: /e/ Patti J. Sullivan
Patti J. Sullivan, ID # 170124
Counsel for Chapter 13 Trustee
P.O. Box 16406
St. Paul Minnesota
(651) 699-4825

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In re:

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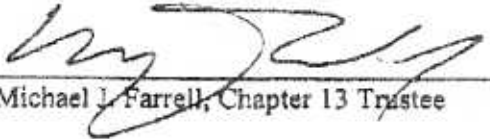
Chapter 13 Case

Debtor.

VERIFICATION

I, Michael J. Farrell, Chapter 13 Trustee, the Movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed: 10-12-04



Michael J. Farrell, Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
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MEMORANDUM OF FACTS AND LAW

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies upon the verified Schedules on file and of record herein.

LEGAL DISCUSSION

The Bankruptcy Code provides that the Court may not confirm a plan over the objection of the Trustee unless the plan provides that all of the debtor's projected disposable income will be applied to make payments under the plan. 11 U.S.C. §1325(b)(1)(B). "Disposable income" is defined in 11 U.S.C. §1325(b)(2)(A) as "income which is received by the debtor and which is not reasonably necessary to be expended... for the maintenance or support of the debtor or a dependent of the debtor. Essentially, this statute requires the debtor to propose a plan that is fully funded, in the sense that the debtor commits to making sufficient payments to pay all the amounts required to be paid to creditors under the proposed plan. A debtor under chapter 13 should contribute all disposable income to the debtor's plan. *In re McDaniel*, 126 B.R. 782, 784 (Bankr. D. Minn. 1991). Upon objection under 11 U.S.C. §1325(b), the debtor must prove that the plan commits all of debtor's disposable income over the three-year period. *In re Sitarz* 150 B.R. 710, 718 (Bankr. D. Minn. 1993).

Here, the debtor's Schedule J reflects expenses in the amount of \$572.95 in utilities, \$100.00 for clothing and \$225.00 for pet expenses. These are either excessive or not reasonably necessary for the debtor's support. If these expenses are eliminated or reduced, there will be excess income available to contribute toward her plan. Accordingly, the debtor's amended plan should be denied, because it appears all of the debtor's disposable income has not been committed to the plan.

CONCLUSION

Confirmation of the Amended Plan should be denied for the reasons stated herein.

Dated: October 12, 2004

Respectfully submitted:

Ulvin and Sullivan Attorneys, P.A.

By: /e/ Patti J. Sullivan
Patti J. Sullivan, ID # 170124
Counsel for Chapter 13 Trustee
P.O. Box 16406
St. Paul Minnesota
(651) 699-4825

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Joeline Kissinger, legal assistant for attorneys for Michael J. Farrell, Chapter 13 Trustee, declare that on October 12, 2004, I served the attached Notice of Hearing and Motion Objecting to Confirmation of Amended Chapter 13 Plan, Memorandum of Facts and Law, and proposed Order on the individuals listed below, in the manner described:

By first class U.S. mail, postage prepaid:

United States Trustee
1015 United States Courthouse
300 South 4th Street
Minneapolis, MN 55415

Melissa Joell Martin
55892 River Fort Drive
Mankato, MN 56001

Mark Halverson, Esq.
Johnson & Anderson Law Firm
600 South Second Street
P.O. Box 637
Mankato, MN 56002-0637

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: October 12, 2004


Joeline Kissinger

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

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Case No.: 04-31050

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ORDER DENYING CONFIRMATION OF AMENDED CHAPTER 13 PLAN

At St. Paul, MN, October 28, 2004.

The above-entitled matter came before the undersigned United States Bankruptcy Judge on the motion of Michael Farrell, Chapter 13 Trustee (the "Trustee") objecting to confirmation of the Debtor's Amended Chapter 13 plan.

Appearances, if any, were noted in the minutes.

Upon the foregoing motion, arguments of counsel, and upon findings of fact and conclusions of law, if any, read into the record,

IT IS ORDERED:

1. Confirmation of the Debtor's Amended Chapter 13 plan filed August 30, 2004 is
DENIED.

Gregory F. Kishel
Chief Judge Of U.S. Bankruptcy Court